



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Rocco D'Antonio

Examiner: Jes F. Pascua

Serial Number: 09/839,791

Group Art Unit: 3727

Filed: April 20, 2001

Atty Docket No: 1139

For: Paper Liner for Plastic Grocery Bags

#11
X. Cobb
3/18/03
RECEIVED
MAR 04 2003
TECHNOLOGY CENTER R3700

SECOND DECLARATION OF APPLICANT

I, Rocco D'Antonio, of full age, do declare as follows:

1. I am President of Better Bag Marketing, LLC and the inventor in the above-captioned patent application, and am fully familiar with the facts stated herein.

2. I sell my invention, as reported in both my first declaration and this second declaration, under the trademark PIPsacks®.

3. PIPsacks®, whose sales were reported in my first declaration and are reported in this second declaration, are constructed such that the base perimeters is essentially equal to the perimeters of standard plastic grocery bags and that the heights come up to the collars (just under the handles) of standard plastic grocery bags used in the supermarket and grocery industry. PIPsacks® have the following dimensions in detail: 1) base - 12 in. x 7 in., height - 12.5 in.; 2) base - 12 in. x 7 in., height - 10.5 in.; 3) base - 11.5 in. x 6.5 in., height - 12.5 in.; 4) base - 13 in. x 8 in., height - 13 in.; and 5) base - 12 in. x 7 in., height 14 in. PIPsacks® as described in this paragraph are constructed with 50-lb. grade paper.

4. The obtaining of market share information is difficult if not impossible. Production and sales of paper are always reported as

tonnage of kraft paper. For people who report sales or production of paper, i.e., supermarket industry, fast food industry, retail sales, and the food service industry, sales and production are not broken down into specific categories or specific markets. Further, individual sales are closely guarded information that no one will release.

5. I do not know of a way to obtain of market share information the Examiner is referring to in the Examiners Final Action. Further, I do not know of anyone who either is able to obtain or possesses market share information to which the Examiner is referring.

6. With regard to the information shown in my first Declaration, sales of the PIPsack, my invention, was limited to Pennsylvania, metropolitan New York, and New Jersey. Since my first declaration submitted in response to the first Office Action, I have begun to sell the PIPsack® in eastern Ohio, Delaware, and Maryland. I make sales mainly by initially calling on purchasing managers of the various supermarkets and groceries; however, I make sales through distributors. Any advertising with regard to the PIPsack® is limited to trade journals as shown in Exhibit A included herein.

7. Attached herewith and made a part hereof as Exhibit A is a typical example of advertising of PIPsacks® in Food Industry Advisor, first appearing in October 21, 2001, and appearing twenty-two (22) times since then in Food Industry Advisor, Tri-State Food News, Food World, and Modern Grocer.

8. The purpose of the advertising of the PIPsack® has been to call attention to the new product, the PIPsack®. There have been no sales promotions, no discounts, and no introductory offers. Sales of the PIPsacks® have been priced in line with other paper grocery sacks.

9. Currently, the typical price for a 1/6-barrel sack made with 70-lb. grade paper is \$16.91 per 500-pack bale or \$594.89 per ton. The typical price for a 1/8-barrel sack made with 57-lb. grade paper is \$13.49 per 500-pack bale or \$663.03 per ton. Whereas, the price for PIPsack® paper liner is \$14.50 per 500-pack bale or \$690.81 per ton.

10. Sales of the PIPsack® began in 2000 where PIPsacks® were ordered by purchasing managers of supermarkets or groceries as shown in my first Declaration. Sales of the PIPsack® have continued throughout the time as shown in my first Declaration and continue to the present as shown in Exhibit B.

11. With regard to Exhibit B, the rows represent distributors of grocery containers to super markets and sales of PIPsacks® to said distributors. The columns represent months in which the bulk sales to said distributors were made.

12. Attached herewith and made a part hereof as Exhibit C are total bulk sales each month represented by means of a graph wherein the ordinate (y - coordinate) represents total bulk sales in number of bales of PIPsacks® and the abscissa (x - coordinate) represents months in which the bulk sales occurred. Each bale of PIPsacks® contains 500 PIPsacks®.

13. Exhibit B shows increased sales to distributors. It should be further pointed out that these distributors in turn are selling the PIPsacks® to additional supermarkets who were not my customers as of the writing of my first declaration.

14. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Signature:



Rocco D'Antonio

Date:

2.25.03